

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
January 4, 2023 Session

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Appellate Courts

STATE OF TENNESSEE v. RODERICK TURNER

Appeal from the Circuit Court for Dyer County
No. 19-CR-277 Mark L. Hayes, Judge

No. W2022-00584-CCA-R3-CD

Following a jury trial, the Defendant, Roderick Turner, was convicted in the Dyer County Circuit Court of three counts of aggravated assault, a Class C felony, and one count of convicted felon in possession of a handgun, a Class E felony. The trial court sentenced the Defendant as a Range III, persistent offender to ten years for each aggravated assault conviction and four years for the convicted felon in possession of a handgun conviction and ordered that the sentences be served consecutively, for a total effective sentence of thirty-four years in the Tennessee Department of Correction. On appeal, the Defendant contends that the evidence is insufficient to sustain his aggravated assault convictions and that the trial court erred in ordering consecutive sentences. Based on our review, we affirm the judgments of the trial court. We remand for the entry of corrected judgments in counts one and two to reflect that the Defendant's convictions for misdemeanor assault were merged into the aggravated assault convictions involving the same victims.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed and Case Remanded

JOHN W. CAMPBELL, SR., J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and J. ROSS DYER, JJ., joined.

Mitchell A. Raines, Franklin, Tennessee (on appeal) and Noel H. Riley, II, Dyersburg, Tennessee (at trial), for the appellant, Roderick Turner.

Jonathan Skrmetti, Attorney General and Reporter; Brent C. Cherry, Senior Assistant Attorney General; and Daniel Goodman, Jr., District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

This case arises out of a June 5, 2019 road rage incident in Dyersburg in which a man driving a Toyota Camry fired multiple gunshots at the vehicle in which Johnny Manus was traveling with his fiancée, Melissa Armendariz,¹ and three children. Within minutes, a Dyersburg Police Officer spotted the Toyota Camry, gave chase, and arrested the Defendant driver. Officers retrieved from the Defendant's route a 9mm handgun that matched shell casings and bullet fragments recovered from the shooting scene. The Defendant gave two different accounts of the shooting in his statement to police. In the first, the Defendant said that he had three passengers in his vehicle and that the man in the right rear passenger seat shot at Mr. Manus's vehicle after recognizing Mr. Manus as someone with whom he had a disagreement. When confronted with the positive results of gunshot residue tests ("GSR") performed on his left hand, the Defendant changed his story, stating that his cousin, Mark Gabby, who had been sitting behind him, fired the gun and that he grabbed the gun from his cousin's hand after the shooting.

The Dyer County Grand Jury returned a thirteen-count indictment charging the Defendant with three counts of attempted second degree murder, three counts of employing a firearm during the commission of a dangerous felony, six counts of aggravated assault, and convicted felon in possession of a handgun. A number of the counts were nolle prosequied, leaving the jury to deliberate on counts one and two, which charged the Defendant with the attempted second degree murders of Mr. Manus and Ms. Armendariz; counts four and five, which charged the Defendant with employing a firearm during the commission of the dangerous felonies of attempted second degree murder; counts seven, eight, and twelve, which charged the Defendant with the aggravated assaults of Mr. Manus, Ms. Armendariz, and Mr. Manus's thirteen-year-old daughter, Haley Manus; and count thirteen, which charged the Defendant with convicted felon in possession of a handgun.

At the July 8-9, 2021 trial, Mr. Manus testified as follows. On June 5, 2019, he was leaving his mother's Dyersburg home with Ms. Armendariz, their one-and two-year-old children, and his older daughter, Haley, when he encountered a Toyota Camry parked diagonally across the road blocking his vehicle's path. He gestured for the Toyota Camry driver to move over, and the driver complied. He then drove past the Toyota Camry without exchanging any words with anyone. As he was turning right at the next stop sign, Ms. Armendariz yelled that "they are getting out [sic] the car." When he looked, he saw

¹ This victim's last name is spelled as both Armendariz and Armenbariz in the trial transcript. We use the spelling contained in the indictment and in the victim's impact statement.

the driver and a rear seat passenger exiting the Toyota Camry but did not see anything in either individual's hand.

As he continued to drive, he saw the Toyota Camry following his vehicle "from the next road over." At another stop sign when he turned left onto Wheeler, he looked to his right and saw the Toyota Camry accelerating in what he interpreted as the driver's attempt to cut him off. By that time, he was already on the phone with a 911 dispatcher. Ms. Armendariz called out that the driver had a gun, and, as he accelerated through the intersection of Wheeler and Lewis, he heard four or five gunshots.

The Toyota Camry turned left at that intersection, affording him a view of its severely damaged front right side. He identified a photograph of the Defendant's vehicle as the same vehicle involved in the shooting. He also identified photographs of his vehicle that showed bullet holes to an area near the license plate, to the rear bumper, and to the muffler. One of the bullets struck the back of his vehicle on the same side that his one-and two-year-old children were sitting. His family members were frightened and screaming during the incident, and he was frightened as well, at first believing that his older daughter had been killed because she "went down" and remained still when the gunshots were fired.

He was able to see the Defendant's face when the Defendant exited the Toyota Camry after moving it for him to pass. Although he was not certain due to the distance, "[i]t appeared to be [the Defendant] in the driver's seat" during the subsequent car chase. After the shooting, he drove to the scene of the Defendant's traffic stop. The Defendant was no longer there, but he identified the Defendant's Toyota Camry to police officers as the vehicle involved in the shooting. He had never seen the Defendant's vehicle before that day. He did not own a firearm at that time, and no one in his vehicle had a gun. On cross-examination, he acknowledged that he did not see who fired the gunshots.

Ms. Armendariz testified on direct examination as follows. The family was leaving the home of Mr. Manus's mother when they encountered a white car parked in the road blocking their way. She cautioned Mr. Manus to be careful, and Mr. Manus waved his arms "to go around[.]" They then drove around the white car and continued to a stop sign, where they turned right. When they did so, she saw that the white car was stopped and that the driver and a rear seat passenger were out of the white car yelling at them. Ms. Armendariz identified a photograph of the Defendant's Toyota Camry as the vehicle involved in the shooting.

After she alerted Mr. Manus, telling him she was scared, the driver and the passenger of the white car got back into their vehicle and began following them on a parallel road. When Mr. Manus reached Wheeler and turned left, the white car turned onto Wheeler at the same time and "sped up right behind [them]." She then saw the driver's left

hand extend out the window holding a gun, and she yelled at her children to get down. The driver fired two shots and then fired additional shots, for a total of approximately six shots fired, as Mr. Manus was swerving around a car that was stopped at a stop sign in front of them. Mr. Manus continued straight through that intersection without stopping, and the white car turned left.

The driver was the only person she saw shooting, and she was scared for her life during the incident. She had never before seen the Defendant or his vehicle, and no one in Mr. Manus's vehicle had a gun. On cross-examination, she testified that she was unable to see the driver of the Toyota Camry because of the vehicle's dark window-tinting. She denied that she told a police officer that there had been a second man shooting from the Toyota Camry. On redirect examination, she expressed her certainty that it was the driver of the Toyota Camry who was shooting.

Fifteen-year-old Haley Manus, who said she was thirteen years old at the time of the shooting, testified the family was leaving her grandmother's home when a white car pulled out in the middle of the road and stopped. She said her father waved his hand, the white car moved, and her father kept driving. After they had passed the white car, she looked back to see one or two people getting out of it. She next saw the white car "a road over like, speeding, trying to catch up[.]" Her father turned left, the white car "followed [them] down the road[.]" and the driver of the white car, using his left arm, held a black gun out of his window. When she saw the gun, she laid across her younger siblings to shield them. She heard a total of approximately five gunshots but did not see the shooting. She was "[s]cared" and "nervous" during the incident. On cross-examination, she testified that she was unable to identify the shooter and that no one in her vehicle was hurt.

Detective Russell Burrow of the Dyersburg Police Department ("DPD") testified that on June 5, 2019, he was a patrol supervisor and responded to the shooting call. He met the Toyota Camry as it turned southbound on Sampson, turned to follow, and saw it accelerate and turn right onto College Street. He lost sight of the vehicle for a second but then saw it turn right on Elm. He briefly lost sight of it again when it turned on Elm but then caught up to find it stopped in the middle of the road and the Defendant exiting the driver's seat and moving to the rear of the vehicle. At that point, he drew his weapon and took the Defendant into custody.

DPD Detective Rod Ward identified photographs obtained from surveillance cameras at a school on College Street, which showed the Defendant's Toyota Camry traveling down College Street at 12: 16 p.m. on June 5, 2019, followed a few seconds later by Sergeant Burrow's vehicle.

DPD Officer Jesse McNeil testified that he retraced the route taken by the Defendant and spotted a Springfield XP firearm on the porch of a house on College Street, approximately fifteen feet from the roadway. He identified photographs of the gun and the empty clip found with the gun. He recalled that there was one round still in the chamber and that the clip could hold eight rounds, for a total of nine rounds. On cross-examination, he acknowledged that he had no knowledge of who placed the gun on the porch.

DPD Officer Jon Lancaster testified that he found an empty magazine for a Springfield XP gun inside a bag in the rear passenger compartment of the Defendant's vehicle.

DPD Sergeant Deanne Mosley testified that she located and collected three 9mm shell casings and a bullet fragment from the intersection of Wheeler and Lewis Streets.

Tennessee Bureau of Investigation Forensic Scientist Kasia Lynch, an expert in firearms and ballistics identification, testified that the three 9mm cartridge casings and the three bullet fragments recovered from Wheeler and Lewis Streets were all fired from the Springfield XP gun recovered from College Street. On cross-examination, she testified that the three bullet fragments appeared to have come from one bullet that had broken apart.

The State entered an agreed stipulation by the parties that the Defendant, prior to the shooting, had been convicted of aggravated burglary in the Dyer County Circuit Court.

DPD Detective Todd Thayer, who interviewed the Defendant on June 5, 2019, testified that the Defendant admitted he was the driver of the vehicle but denied that he had shot a gun. The Defendant told Detective Thayer that he was driving in the Milltown area with his girlfriend in the front passenger seat, his cousin, Mark Gabby, Jr., or "Pooh," in the rear passenger seat behind him, and a fourth individual, Gabriel Gauldin, in the rear passenger seat behind the Defendant's girlfriend. The Defendant said that Mr. Gauldin "saw someone [Mr. Gauldin] had been having problems with[,] and asked the Defendant to stop his vehicle. The Defendant stated that Mr. Gauldin jumped out, fired at the people, and then jumped back inside the Defendant's vehicle.

Detective Thayer testified that he had been briefed before the interview that the driver of the Toyota Camry had used his left hand to shoot. He noticed when the Defendant signed his waiver of rights form that the Defendant was left-handed, and he had GSR tests performed on the Defendant's left hand. When he confronted the Defendant with the positive results from the two separate GSR tests performed, the Defendant changed his story, stating that it was his cousin sitting behind him who fired the gun. The Defendant said he grabbed the gun from his cousin and assumed that was how gunshot residue got on his hand. According to Detective Thayer, it was not possible for that to happen. Detective

Thayer also testified that the Defendant's first account of four individuals in his vehicle was not possible because the passenger side back seat of the Defendant's Toyota Camry held two televisions and "a whole bunch of other stuff[,]" leaving no room for a fourth person.

Detective Thayer identified recorded phone calls that the Defendant made to his mother and to his girlfriend from the jail. The full recordings were introduced as a trial exhibit by stipulation of the parties, while shortened portions of the calls were played for the jury during Detective Thayer's testimony. Also introduced as a separate trial exhibit was Detective Thayer's written summary of the recorded phone calls. According to the summary, the Defendant told his mother in a June 5, 2019 phone call that he had lost his temper and that he believed his cousin had told on him. In three separate phone calls to his girlfriend the next day, the Defendant told her that his cousin was the one who had thrown the gun out, asked her to get his cousin "to take the charge[,]" and asked her to retrieve his cell phone because of what was on it.

Detective Thayer identified three videos found on the Defendant's cell phone that had been recorded on June 3, 2019, as well as screenshots taken from those videos. The videos and screenshots showed the Defendant in his vehicle with what appeared to be the same gun used in the shooting. Both the videos and the screenshots were published to the jury and introduced as trial exhibits.

On cross-examination, Detective Thayer testified that he did not charge Mr. Gabby in connection with the crime because the witnesses reported that it was the driver who was shooting using his left hand, the Defendant was left-handed and his left hand tested positive for GSR, and the GSR test on Mr. Gabby's hands came back negative.

The Defendant elected not to testify and rested his case without presenting any witnesses. Following deliberations, the jury found the Defendant guilty of the lesser-included offenses of assault in counts one and two of the indictment, guilty of the lesser included offenses of possession of a firearm during the commission of a dangerous felony in counts four and five of the indictment, guilty of the indicted offenses of aggravated assault in counts seven, eight, and twelve of the indictment, and guilty of the indicted offense of convicted felon in possession of a handgun in count thirteen of the indictment.

The State later moved to dismiss the Defendant's convictions for possession of a firearm during the commission of a dangerous felony based on the jury's failure to convict the Defendant of the dangerous felonies of attempted second degree murder, and judgments were subsequently entered reflecting that those counts were nolle prossed.

At the Defendant's sentencing hearing, the State introduced the Defendant's presentence report, which reflected that the twenty-nine-year-old Defendant completed the eleventh grade but had no high school diploma or GED; that his only work history was a one-month job in 2018 at Colonial Rubber Works of Dyersburg, which he quit without notice because it was "boring"; and that the Defendant reported having spent approximately eight years of his adult life incarcerated and other periods of his adulthood "just hanging' in the 'streets.'" The Defendant reported that he first used alcohol at the age of eighteen and last used alcohol on the day of his arrest for the instant offenses but had never had any problems caused by drinking alcohol. The Defendant reported that the only illegal drug he had ever used was marijuana, which he first began at the age of thirteen or fourteen and used almost daily when not incarcerated. The Defendant reported that his marijuana usage had never caused him any problems. The Defendant reported that he had been referred for outpatient counseling at "Pathways of Dyersburg" after he was charged with carrying a gun to school when he was an "intermediate school student[.]" He could not recall receiving any diagnosis or being prescribed any medication. He rated his physical health as good and said he was not taking any prescription medication.

The presentence report reflected that the Defendant had prior convictions for assault, failure to appear, evading arrest, burglary of an automobile, theft of property valued over \$1,000, and three counts of aggravated burglary. He also had pending charges in Crockett County Circuit Court for two counts of aggravated burglary, two counts of theft valued at \$2,500 or more but less than \$10,000, and one count of vandalism under \$1,000. The Defendant's Strong-R assessment resulted in a "high violent" risk level score, with a needs score of high for education, residential, and mental health.

The only witness at the sentencing hearing was Bridgette Brown, Dyer County Circuit Court Deputy Clerk, who testified that the Defendant was out on bond in two separate pending cases at the time of the instant offenses. She said the Defendant was released on bond on August 18, 2018, in case number 18-CR-276 in which he was charged with evading arrest with an offense date of May 13, 2018. In case number 18-CR-81, the Defendant was charged with aggravated burglary and theft over \$1,000, with an offense date of December 3, 2019, and was released on bond on January 28, 2019.

At the conclusion of the hearing, the trial court sentenced the Defendant as a Range III, persistent offender to the minimum term of ten years for each of his aggravated assault convictions and to the minimum term of four years for his conviction of possession of a handgun by a convicted felon. The trial court sentenced the Defendant to six months for each of the misdemeanor assault convictions. However, at the Defendant's motion for new trial hearing, the trial court merged those convictions into the aggravated assault convictions involving the same victims. Finding that the Defendant was both a dangerous offender and an offender whose record of criminal activity was extensive, the trial court

ordered that the sentences be served consecutively, for a total effective sentence of thirty-four years at 45% in the Tennessee Department of Correction. Following the denial of his motion for new trial, the Defendant filed a timely notice of appeal to this court.

ANALYSIS

I. Sufficiency of the Evidence

As his first issue, the Defendant challenges the sufficiency of the convicting evidence for his aggravated assault convictions. When the sufficiency of the evidence is challenged on appeal, the relevant question of the reviewing court is “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also* Tenn. R. App. P. 13(e) (“Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.”); *State v. Evans*, 838 S.W.2d 185, 190-92 (Tenn. 1992); *State v. Anderson*, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992).

Therefore, on appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from it. *See State v. Williams*, 657 S.W.2d 405, 410 (Tenn. 1983). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. *See State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990). “A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient.” *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982).

The guilt of a defendant, including any fact required to be proven, may be predicated upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *See State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999). The standard of review for the sufficiency of the evidence is the same whether the conviction is based on direct or circumstantial evidence or a combination of the two. *See State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011).

To sustain the convictions for aggravated assault, the State had to prove beyond a reasonable doubt that the Defendant intentionally or knowingly caused Mr. Manus, Ms. Armendariz, and Ms. Haley Manus to reasonably fear imminent bodily injury by his use or display of a deadly weapon. Tenn. Code Ann. §§ 39-13-101(a)(2), -102(a)(1)(A)(iii). The Defendant argues that “because no one could clearly identify who was shooting, what

they were aiming at, or testify that the occupants of the white car verbalized any threats against them, the State was unable to establish, beyond a reasonable doubt, that there was knowing or intentional conduct on the part of [the Defendant] to place the victims in fear of bodily injury.” The State argues that the evidence was sufficient to sustain the verdicts. We agree with the State.

Viewed in the light most favorable to the State, the evidence establishes that the Defendant lost his temper after Mr. Manus motioned him to move his vehicle out of the roadway. The Defendant yelled angrily after the Manus family as Mr. Manus was driving away, got back into the driver’s seat of his Toyota Camry and pursued the Manus family. After the Defendant caught up to the victim’s vehicle, he fired multiple gunshots at Mr. Manus’s vehicle as Mr. Manus was attempting to get his family to safety. We agree with the State that the jury could have reasonably found that the Defendant acted intentionally or knowingly based on his pursuit of the victims and his firing of multiple gunshots. We, therefore, conclude that the evidence is sufficient to sustain the convictions for aggravated assault.

II. Consecutive Sentences

The Defendant next challenges the trial court’s order of consecutive sentences. He argues that the trial court failed to make the necessary findings required for consecutive sentences under the dangerous offender classification and abused its discretion in finding that he qualified as an offender whose record of criminal activity is extensive. The State argues that the trial court “properly determined that consecutive sentences were appropriate and sentenced the defendant in a manner consistent with the principles and purposes of sentencing.”

A trial court is to consider the following when determining a defendant’s sentence and the appropriate combination of sentencing alternatives:

- (1) The evidence, if any, received at the trial and the sentencing hearing;
- (2) The presentence report;
- (3) The principles of sentencing and arguments as to sentencing alternatives;
- (4) The nature and characteristics of the criminal conduct involved;
- (5) Evidence and information offered by the parties on the mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114;

(6) Any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee; and

(7) Any statement the defendant wishes to make in the defendant's own behalf about sentencing.

Tenn. Code Ann. § 40-35-210(b).

In determining if incarceration is appropriate in a given case, a trial court should consider whether:

(A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;

(B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or

(C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.

Id. at § 40-35-103(1). The sentence imposed should be (1) “no greater than that deserved for the offense committed” and (2) “the least severe measure necessary to achieve the purposes for which the sentence is imposed.” *Id.* at § 40-35-103(2), (4).

The trial court is granted broad discretion to impose a sentence anywhere within the applicable range and the sentencing decision of the trial court will be upheld “so long as it is within the appropriate range and the record demonstrates that the sentence is otherwise in compliance with the purposes and principles listed by statute.” *State v. Bise*, 380 S.W.3d 682, 709-10 (Tenn. 2012). We, likewise, review the trial court's order of consecutive sentencing for abuse of discretion, with a presumption of reasonableness afforded to the trial court's decision. *See State v. Pollard*, 432 S.W.3d 851, 860 (Tenn. 2013) (applying the same deferential standard announced in *Bise*, 380 S.W.3d at 682, to the trial court's consecutive sentencing decisions).

A trial court may order multiple sentences to run consecutively if it finds by a preponderance of evidence that one or more of the seven factors listed in Tennessee Code Annotated section 40-35-115(b) applies, including the two found by the trial court in this case - - that “[t]he defendant is an offender whose record of criminal activity is extensive[,]” and that “[t]he defendant is a dangerous offender whose behavior indicates little or no regard for human life and no hesitation about committing a crime when the risk

to human life is high[.]” Tenn. Code Ann. § 40-35-115(b)(2), (4). When the trial court bases consecutive sentencing upon its classification of the defendant as a dangerous offender, it must also find that an extended sentence is necessary to protect the public against further criminal conduct by the defendant and that the consecutive sentences reasonably relate to the severity of the offense committed. *State v. Lane*, 3 S.W.3d 456, 460-61 (Tenn. 1999); *State v. Wilkerson*, 905 S.W.2d 933, 937-38 (Tenn. 1995).

In ordering consecutive sentences, the trial court made the following findings:

THE COURT: . . . The Court finds that the Defendant is an offender whose record of criminal activity is extensive. And the Court also finds that the Defendant is a dangerous offender whose behavior indicates little or no regard for human life and no hesitating about committing a crime in which the risk to human life is high.

These sentences will run consecutive.

. . . .

[PROSECUTOR]: Let me just clarify, is that each count is consecutive?

THE COURT: Right.

For the reason I stated that I am running them consecutive, but also because of the seriousness of the offense that was committed. It’s just - - -

[PROSECUTOR]: Your Honor, I assume we need to set a motion for new trial?

The Defendant argues that the trial court failed to make the necessary additional findings required for the imposition of consecutive sentences as a dangerous offender. Although “there is no requirement that the trial court’s reasoning ‘be particularly lengthy or detailed[.]’” *State v. Quinton Devon Perry*, -- S.W.3d --, 2022 WL 17544841 (Tenn. Dec. 9, 2022) (quoting *Bise*, 380 S.W.3d at 706), the trial court must make the necessary *Wilkerson* findings to support the imposition of consecutive sentences under the dangerous offender criterion. Here, the trial court appears to have been cut off before it could make those necessary findings.

A trial court, however, has the discretion to impose consecutive sentences after finding by a preponderance of the evidence that *any* one of the criteria in Tennessee Code Annotated section 40-35-115(b) applies. The following non-exclusive factors should be considered by a trial court in determining whether a defendant is an offender with an extensive history of criminal activity:

- (1) The amount of criminal activity, often the number of convictions, both currently before the trial court for sentencing and prior convictions or activity;
- (2) The time span over which the criminal activity occurred;
- (3) The frequency of criminal activity within that time span;
- (4) The geographic span over which the criminal activity occurred;
- (5) Multiplicity of victims of the criminal activity; and
- (6) Any other fact about the defendant or circumstance surrounding the criminal activity or convictions, present or prior, that informs the determination of whether an offender's record of criminal activity was considerable or large in amount, time, space, or scope.

Perry, 2022 WL 17544841, at *9 (footnotes omitted). We conclude that the record supports the imposition of consecutive sentences based on the trial court's finding that the Defendant was an offender whose record of criminal activity was extensive. After first finding that the Defendant's shooting at a vehicle was serious conduct for which incarceration was appropriate, the trial court went on to review the Defendant's history of criminal offenses, the instances in which the Defendant had been given suspended sentences, and the Defendant's continuation of criminal behavior, before finding that the Defendant had a "long history of criminal conduct" and that confinement was necessary to avoid depreciating the seriousness of the offense:

He's got a prior history of criminal behavior that is substantial. He's got a prior Aggravated Burglary in October of 2010, a Theft over 1,000 in October of 2010, a Burglary of a Motor Vehicle in October of 2010, two more Aggravated Burglaries in October of 2010, an Assault on July 20, 2018, a misdemeanor Evading Arrest and he's got a Failure to Appear in 2018.

He was given . . . the time in the Tennessee Department of Correction[.]. On the Assault in July of 2018, he had a suspended sentence.

And then, on the Evading Arrest in 2018, he had a suspended sentence. And for Failure to Appear, he again, was given 11/29 . . . suspended time served.

So in considering the sentencing, the principles of sentencing, he has a long history of criminal conduct. Confinement is necessary to avoid depreciating the seriousness of the offense. Less restrictive measures from confinement have not proved to, to do any good. He does not have any potential for rehabilitation.

The record reflects that during the portion of his adult life when he was not incarcerated, the Defendant was engaged in criminal activity resulting in adult criminal convictions that started at the age of seventeen and continued through the time of the instant offenses. While the trial court failed to make the appropriate findings per *Wilkerson*, any error does not result in reversal of the defendant's sentence as the trial court's finding of extensive criminal history is fully supported by the record. We, therefore, affirm the trial court's imposition of consecutive sentences on the basis that the Defendant was an offender whose record of criminal activity was extensive.

CONCLUSION

Based on our review, we affirm the judgments of the trial court but remand for entry of amended judgments to reflect that the misdemeanor assault convictions were merged into the felony assault convictions.

JOHN W. CAMPBELL, SR., JUDGE